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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6

7 MARY LABRADOR, individually and on) Case No. 08-2270 SC
8 behalf of all others similarly)
9 situated,) ORDER GRANTING PRELIMINARY
10 Plaintiff,) APPROVAL OF SETTLEMENT
11 v.)
12 SEATTLE MORTGAGE COMPANY,)
13 Defendant.)
14

15 Plaintiff Mary Labrador ("Plaintiff"), on behalf of herself
16 and a proposed class of similarly situated elders, and Defendant
17 Seattle Mortgage Company ("SMC"), have entered into a Settlement
18 Agreement which would fully and completely resolve this litigation.
19 See ECF No. 98-1 Ex. A ("Settlement Agreement"). Plaintiff has
20 moved for, and SMC has stated that it does not oppose, an order
21 preliminarily approving the Settlement and ordering that notice be
22 given to the class. ECF No. 98 ("Mot."). The matter having come
23 before the Court on November 15, 2010 and good cause appearing, the
24 Court hereby grants the motion and orders as follows:

- 25 1. The Court finds that the proposed Settlement Class meets each
26 of the requirements of Federal Rule of Civil Procedure 23(a).
27 (i) Numerosity. The claims of the Settlement Class are
28 numerous, because the evidence shows that over 11,000 elders

1 in California, Florida Hawaii, Michigan, Minnesota, Missouri,
2 Nevada, New Jersey, Ohio, Pennsylvania, Rhode Island, and
3 Washington who purchased Home Equity Conversion Mortgage
4 ("HECM") loans funded by defendant Seattle Mortgage Company
5 ("SMC") are situated similarly to the Plaintiff. Each of such
6 homeowners was charged a "loan origination" fee by SMC in
7 connection with a HECM loan referred by a loan correspondent,
8 while SMC also paid the loan correspondent a "correspondent"
9 or "service release premium" fee. (ii) Commonality. The
10 commonality requirement of Rule 23(a) is met because the
11 legality of SMC's loan correspondent compensation practices is
12 a common issue which equally affects all members of the
13 proposed class. If, as Plaintiff contends, SMC's relationship
14 with its sponsored loan correspondents and mortgage brokers,
15 including its standard formula for compensating those
16 correspondents and brokers for the origination of HECM loans
17 in SMC's name, creates a "financial interest" within the
18 meaning of 24 C.F.R. § 206.31, then the regulation prohibited
19 SMC from charging homeowners the origination fees that were
20 paid to the correspondent brokers. (iii) Typicality.
21 Plaintiff Labrador's claims are typical of the claims of the
22 class, in that her claims arise from the same practice or
23 course of conduct that forms the basis of all class members'
24 claims, and are based upon the same legal theory. Mrs.
25 Labrador is a typical California senior who refinanced her
26 residence through an SMC-funded HECM loan and was charged
27 allegedly illegal origination fees. (iv) Adequacy. Plaintiff
28 Labrador is an adequate class representative. Plaintiff has

1 retained qualified counsel and there is no evidence of any
2 antagonism or conflict of interest between her and the other
3 members of the class.

4 2. Plaintiff's claims meet the requirements of Rule 23(b)(3).
5 The common questions of law and fact discussed above clearly
6 predominate over any questions potentially affecting
7 individual members of the class, and a class action is
8 superior to other available methods for the fair and efficient
9 adjudication of the controversy. Because the amount of money
10 at issue for each individual member of the class is relatively
11 small, it would be difficult for class members to prosecute
12 individual actions. Further, the legal issue presented by
13 Plaintiff's claim is complex, and in the absence of a class
14 action there is a risk of inconsistent and conflicting
15 verdicts. The Court is unaware of any other cases involving
16 similar claims, and there is no evidence that any class member
17 has an interest in individually controlling a separate claim.
18 A class proceeding is manageable, as Plaintiff has shown that
19 the identity of class members and the amount of the alleged
20 overcharges are readily ascertainable from SMC's computer
21 systems.

22 3. Based on the foregoing, the Court conditionally certifies the
23 following Settlement Class: All elders who, prior to June 20,
24 2007, entered into a Home Equity Conversion Mortgage through a
25 loan correspondent sponsored by SMC and whose claims are not
26 time-barred. Excluded from the class is anyone whose HECM
27 loan was discharged through bankruptcy, or whose bankruptcy
28 petition is pending as of the date the Settlement becomes

1 final.

2 4. Pursuant to Federal Rule of Civil Procedure Rule 23(g), the
3 Court appoints Schneider Wallace Cottrell Brayton Konecky LLP,
4 Chavez & Gertler LLP, and Bonnett, Fairbourn, Friedman &
5 Balint PC as Class Counsel, and Mary B. Labrador as class
6 representative.

7 5. The Court authorizes the parties to retain Rust Consulting,
8 Inc. as the Settlement Administrator.

9 6. The final Fairness Hearing shall be held before this Court on
10 January 7, 2011 at 10:00 a.m. to hear any objections and to
11 determine: (i) whether the proposed settlement and compromise
12 of this action as set forth in the Settlement Agreement is
13 fair, reasonable, and adequate for Settlement Class Members
14 and should be approved by the Court; (ii) whether to approve
15 the request of Class Counsel for payment of attorneys' fees,
16 costs and expenses; (iii) whether to approve the class
17 representative's request for payment of a service award; and
18 (iv) whether Final Judgment should be entered. Notice of such
19 hearing, in substantially the form as filed with the Court on
20 November 15, 2010, see ECF No. 107-1 Ex. A,¹ shall be mailed
21 to Settlement Class Members five (5) days after the entry of
22 this Order in the manner set forth in paragraph 6 of the
23 Settlement Agreement.

24 7. Any interested person may appear at the Fairness Hearing to
25 show cause why the Settlement and/or the requests for
26 attorneys fees and a service award should or should not be

27 ¹ Parties shall amend this Notice to reflect the dates and
28 deadlines provided in this Order, and file a copy of the revised
Notice with the Court.

1 approved. However, no person shall be heard or entitled to
2 contest the approval of the terms and conditions of the
3 proposed Settlement or the proposed fee and/or service awards
4 unless that person has filed such papers with this Court on or
5 before December 31, 2010. Any Settlement Class Member who
6 does not submit an objection in the manner provided above
7 shall be deemed to have waived any objection he or she may
8 have to class certification, to the fairness, adequacy, or
9 reasonableness of the Settlement, to the amount of attorneys'
10 fees and reimbursements approved, and to the amount of any
11 service award approved.

- 12 8. Any Settlement Class Member who wishes to be excluded from the
13 Settlement class and not be bound by the Settlement Agreement
14 must mail a request for exclusion to the Settlement
15 Administrator, postmarked no later than within thirty-five
16 (35) days after Notice is mailed. For a request for exclusion
17 to be valid, it must be timely and must: (i) state the name of
18 this lawsuit, *Labrador v. Seattle Mortgage Company*; (ii)
19 include an unequivocal statement that the individual wishes to
20 "opt out" or be excluded from the Settlement; (iii) state the
21 individual's full name and address; and (iv) be signed and
22 dated. Any Settlement Class Member who does not submit a
23 timely request for exclusion shall be bound by the Settlement
24 Agreement, including the Release set forth in paragraph 3
25 thereof, and by the Final Judgment in this matter if and when
26 it is entered. Any Settlement Class Member who properly opts
27 out will be deemed to have waived any rights or benefits under
28 the Settlement Agreement, and will not have standing to object

to the Settlement or to seek to intervene in the action.

9. All memoranda and other documents in support of Class Counsel's request for costs and attorneys' fees and the class representative's request for a service award shall be filed within five (5) days after the entry of this Order.
10. All memoranda and other documents in support of final approval of the Settlement shall be filed on or before December 31, 2010 (seven (7) days prior to the Fairness Hearing).
11. All other deadlines and proceedings in this litigation are hereby stayed through the date of the Fairness Hearing.
12. The Court expressly reserves its right to adjourn the Fairness Hearing from time to time without further notice other than to counsel of record and to approve the proposed Settlement and request for attorneys' fees and expenses and the request for a service payment to the class representative at or after the originally scheduled Fairness Hearing.
13. If for any reason the settlement is not finally approved or does not become effective, this provisional approval and class certification order shall be null and void, and shall not be used or referred to for any purpose in this action or any other action or proceeding.

IT IS SO ORDERED.

Dated: November 16, 2010


UNITED STATES DISTRICT JUDGE